Newman Refuses Certificate Of Cause in Frank Appeal

ATTORNEYS TO TAKE APPEAL TO JUSTICES U. S. SUPREME COURT

Judge Newman Was Willing

to Allow Appeal, but Declined

to Sign a Certificate Setting

Out “Probable Cause”

INDIVIDUAL JUSTICES WILL BE APPEALED TO

Frank’s Attorneys Leave Mon-
day Afternoon to Ask Jus-
tice Lamar to Certify Writ
of Error to Court

Judge William T. Newman, of the United States District Court, on Monday afternoon, after having heard at length from Leo Frank’s Attorneys and from Attorney General Warren Grice and Solicitor General Hugh M. Dorsey, representing the State, declined to certify Frank’s Appeal from his decision refusing Frank a Writ of Habeas Corpus.

Judge Newman stated that he was willing to allow the Appeal but could not, in view of his decision in denying the Writ, issue a Certificate to the effect that he felt that there was probable cause for appeal, such a Certificate being required by the Act of Congress of 1908 in Appeals in Habeas Corpus Cases.

Attorneys Henry C. Peeples and Harry A. Alexander, representing Frank, stated to The Journal that Judge Newman’s action was in effect a denial of their motion for an Appeal, as in

the absence of the required Certificate the United States Supreme Court would not put the Appeal on its Calendar.

However, they announced that at once, perhaps during the afternoon, some of Frank's Attorneys would leave for Washington to lay the Case before Justice Lamar in an effort to have him certify an Appeal, which would place the Case upon the Calendar of the Supreme Court. Should Justice Lamar deny their petition, they will apply to other justices, in fact they will follow the same procedure as they did when they sought a Writ of Error on the decision of the State Supreme Court overruling their motion to set aside the verdict.

NEWMAN'S ORDER.

Judge Newman's formal order denying the Appeal follows:

"In the District Court of the United States for the Northern District of Georgia."

"Ex Parte Leo M. Frank."

"Petition for Writ of Habeas Corpus, October term, 1914."

"The above styled petition having been presented to the Court and by Order and Judgment heretofore made, the prayer of the same for the issuance of the Writ of Habeas Corpus having been denied, and the petitioner having filed his petition for the allowance of an Appeal with the Certificate attached to the Supreme Court of the United States, together with an Assignment of Errors upon the said order and judgment:"

"The Court declines to grant the Appeal prayed upon the Ground that having refused to grant even the issuance of the Writ of Habeas Corpus because the Court was of the opinion that under the facts stated in the petition for the Writ and the Exhibits attached thereto and referred to therein and made a part of the same, and under the law applicable thereto, if the Writ were granted and the hearing given the petitioner could not be discharged from custody, and no relief could be granted thereunder, and that the petitioner was not entitled to the Writ,

the Court could not, consistently therewith, make the Certificate required by the Act of Congress of March 10, 1908, as necessary to the allowance of an Appeal, to wit: that there is probable cause for such allowance of Appeal."

"This 21st day of December, 1914."

"WILLIAM T. NEWMAN,

"U. S. District Judge."

In denying the Certificate Judge Newman said:

"I would be very glad if this Appeal could be heard by the United States Supreme Court and that Court pass upon it, but I believe when I denied the Writ of Habeas Corpus I disqualified myself from certifying that there was probable cause for the Appeal. I do not think there is such cause."

Judge Newman's order denying the Application for a Writ of Habeas Corpus follows:

"The petition of Leo M. Frank for a Writ of Habeas Corpus to be directed to C. Wheeler Mangum, Sheriff and Ex-Officio jailer of Fulton County, Georgia, having been presented to the Court with the Exhibits attached thereto, and there being also exhibited to the Court and considered by it a copy of the motion for new trial referred to therein, and a copy of the opinion of the Supreme Court of the State of Georgia referred to in Paragraph Eleven thereof, both of which Exhibits have been identified by the Court and ordered filed, and the Court having fully considered the said petition and said Exhibits and said copy of the motion for a new trial and of said opinion of the Supreme Court of Georgia, the Court finds that the facts alleged and shown are insufficient, under the law applicable thereto, to authorize the issuance of the Writ; and the Court, being of the opinion, from the allegations and facts stated in the petition and the exhibits and in said copy of the motion, for new trial and of the opinion of the Supreme Court of Georgia, under the law applicable thereto, that if the Writ be granted and a hearing given, the petitioner could not be

discharged from custody, and no relief granted thereunder, and that petitioner is not entitled thereto."

"It is ordered and adjudged by the

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(Continued From Page 1.)

Court that said petition for a Writ of Habeas Corpus be, and the same is hereby, refused; to which ruling and refusal petitioner, by his counsel, excepts."

"This 21st day of December, 1914."

ARGUMENTS ALLOWED.

When the Court convened at 10 o'clock Monday morning, Judge Newman formally passed the order denying the Application

for a Writ of Habeas Corpus, after which he announced that he would hear from both Frank's Attorney's and State's Counsel on the motion for an Appeal.

"I want you gentlemen," said the Judge, "to discuss the proposition of whether there is anything on which the Court can properly certify to an Appeal."

Henry C. Peeples, of Frank's Counsel, was heard first. He contended that the history of the law shows and decisions hold that Judges have no discretion in such Cases, even if the grounds upon which the motion is brought are frivolous.

"In my opinion, this appeal is not frivolous. The famous Durand Case, which has been mentioned in connection with this Case, was appealed to the United States Supreme Court and entertained by that body, although the grounds upon which it was appealed were purely frivolous."

Attorney General Grice, for the State, opposed the granting of the motion for an Appeal and contended that the questions at issue had already been adjudicated by the State Courts.

"These Courts," he said, "and even the United States Supreme Court have looked into this claim by Frank that his Constitutional Rights have been violated, and these Courts have held that he has not been denied due process of law. He is not entirely remediless, even if this Court denies his motion for an Appeal. He can still go before the justices of the United States Supreme Court in an effort to get such an Appeal before the Supreme Court. Therefore, this Court should not put this Case in position where there can be a further delay of perhaps a year in the execution of the judgment of the State Courts."

"Why do you say it may take a year to get a hearing?" inquired Judge Newman.

"Because," replied the Attorney General, "the United States Supreme Court dislikes to advance any cause, even though such an advance is asked by a State. If it advanced all the Cases in

which the States are interested, months, and perhaps years, would be required to hear them."

DORSEY'S REMARKS.

Solicitor Dorsey, also representing the State, made the most extended argument. He declared that if the Court certified the Appeal, it would do so in the face of decision by two Superior Court Judges, two decisions by the Georgia Supreme Court and a decision by the full bench of the United States Supreme Court.

He said that the same point involved here—that of Frank's absence from the Court Room at the time of the rendition of the verdict against him—had been embodied in the motion for a new trial, although it had been only narrated there and not set down as a Federal Constitutional Point.

"We abundantly disposed of this allegation of mob influence before Judge Roan at the time Frank made his motion for a new trial," said the Solicitor, "and we satisfactorily met the allegation before every Court in which it has been urged. We showed by witnesses that none of the alleged demonstrations in the Court Room during Frank's trial and none of those alleged to have occurred in the Streets outside the Court House, ever came to the attention of the jury. Every member of the jury made an Affidavit to this effect."

FRIVOLOUS, SAYS PEEPLES.

Solicitor Dorsey urged that in the event the Court certified the appeal he included in his Certificate the Record showing how the State met and disposed of the allegations of disorder at the trial. To this, Mr. Peeples demurred, saying that he considered the proposition of the Solicitor as altogether frivolous.

"An effort is being made here," said Mr. Dorsey, "to delay the execution of the State law."

Mr. Dorsey read at length from the Record of the Case, quoting extracts from the evidence and from the various motions and decisions.

In conclusion, Mr. Dorsey said:

“Your honor, this is trifling with the Court. I mean no reflection on Counsel for the Applicant, but I refer to the proposition as a matter of law.”

“Instead of treating him with lighter consideration, the Courts have given Leo Frank greater consideration than any other man ever convicted of crime in Georgia.”

“They ask that you by certifying this Appeal and stating that there is probable cause to force the United States Supreme Court to docket and hear it under the Act of 1908, requiring that a Certificate for Appeal set out that there is probable cause.”

“If there ever was a Case which the Act of 1908 was made to cover, it is this one, which has been adjudicated by every Court before which it has been brought, including yourself. Frank still has the right, if you deny the Appeal, to go up and ask the Supreme Court to go into his point.”

Mr. Peeples followed Mr. Dorsey in a brief argument. He stated that Frank had never had a hearing on the point at issue except in the Georgia Supreme Court, and he said the defense contends that Frank has not had due process of law. “If your honor feels that this Application is purely frivolous, then it is your duty to deny it.”

Judge Newman replied by saying that if he had felt that there was merit in the Application, he would not have denied it.